Amanah Raya Capital Sdn Bhd v Fawzia bt Othman

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 24M-22–06 OF 2013
ASMABI MOHAMAD JC
25 FEBRUARY 2014

Land Law — Sale of land — Order for — Cause to the contrary — Whether proved — Whether Form 16D properly served on defendant by AR post — Allegation that foreclosure would hamper negotiations for sale of shares in a company — Allegation that plaintiff should not have granted loan due to defendant's age and financial standing — Allegation of oppressive conduct and misrepresentation — Failure to prove cause to the contrary — National Land Code s 256 — Rules of Court 2012 O 83

The plaintiff had applied for an order for sale pursuant to s 256 of the National Land Code ('the NLC') over a property known as No 75, Jalan Aminuddin Baki, Taman Tun Dr Ismail, 60000 Kuala Lumpur ('the said property'). The said property was charged by the defendant to the plaintiff as a security for the Islamic Term Financing-i Facility for the sum of RM4,100,000 granted by the plaintiff to one Dato' Zulkifli bin Ahmad ('the borrower'). The borrower defaulted on the loan. The plaintiff, through its solicitors caused a notice of demand to be sent to the defendant by way of a registered post to claim the outstanding sum. Subsequently a Form 16D was issued by the solicitors. Since no payment was received from the defendant, the plaintiff made the present application for an order for sale by way of public auction. The defendant opposed the application on the ground that there was cause to the contrary. Firstly the defendant claimed that the Form 16D and the relevant foreclosure cause papers were not served on her. The defendant claimed that there was only proof that the same had been posted but there was no evidence to show that it had been received by the defendant. Secondly, the defendant claimed that there were ongoing negotiations between the borrower/defendant with a third party for the sale of the interest and shares in a company known as Ika Jaya Sdn Bhd ('Ika') and if the order for sale was granted, this would hamper the sale. Thirdly, the defendant claimed that despite having full knowledge about the financial standing, the age of the borrower and the defendant and the incapacity of the borrower and/or Ika to make repayment, the plaintiff proceeded to grant the loan facility. Fourthly, the defendant claimed that the plaintiff had acted recklessly and had abused the process of law with the ultimate aim to cause oppression to the defendant and that there were elements of misrepresentation involved in the whole transaction.

Held, allowing the plaintiff's application with costs:

(1) Pursuant to s 256 of the NLC, once all the pre-conditions as set out in the law, the NLC and O 83 of the Rules of Court 2012 ('ROC') have been fully satisfied by the chargee, the court is left with no option but to grant the prayers sought by the chargee for an order of sale of the land charged unless the court is satisfied there exists 'cause to the contrary' (see para 9).

(2) The document filed in court proved that the foreclosure cause papers were served on the defendant. With regard to service by way of AR card, it was held in *Yap Kee Huat & Ors v Pembangunan Warisan Murni Sejahtera Sdn Bhd & Anor* [2008] 5 MLJ 112 that the law does not require the plaintiff to prove receipt of the documents. Once the service by AR had been effected there is prima facie proof that the documents were served on the defendant unless the defendant was able to rebut otherwise. As regards service of Form 16D, the plaintiff had satisfied the requirements as to the mode of service as agreed by parties (see para 15).

(3) The alleged negotiations for the sale of interest and shares in Ika had nothing to do with the plaintiff. Further, there was no guarantee that the monies obtained through the sale, which were negotiated between the plaintiff/defendant, and the third party would be paid to the plaintiff to settle the outstanding amount owed by the borrower to the plaintiff (see para 16).

(4) If the defendant and/or the borrower and/or Ika knew from the outset that these respective parties had no means to settle the amount under the loan facility, they ought not to have applied for the facility and/or in the case of the defendant, she ought not have offered the property to be charged as a security for the facility (see para 17).

(5) Nothing had been demonstrated by the defendant of the oppressive acts of the plaintiff. Neither had the claim of misrepresentation been shown to the court (see para 18).

(6) The plaintiff had satisfied all the statutory and procedural requirements as set out in s 256 of the NLC and O 83 of the ROC respectively. The defendant had failed to show any rule of the common law or doctrine of equity operating in the defendant's favour and against which an order for sale would militate. The defendant had failed to show that its case came within the three categories of 'cause to the contrary' as enunciated in *Low Lee Lian v Ban Hin Lee Bank* [1997] 1 MLJ 77 (see para 20).

[Bahasa Malaysia summary

Plaintif telah memohon untuk suatu perintah jualan menurut s 256 Kanun Tanah Negara (KTN) atas sebuah hartanah dikenali sebagai No 75, Jalan Aminuddin Baki, Taman Tun Dr Ismail, 60000 Kuala Lumpur ('hartanah itu'). Hartanah itu telah dicagarkan oleh defendan kepada plaintif sebagai jaminan untuk Islamic Term Financing-i Facility bagi jumlah RM4,100,000 yang

diberikan oleh plaintif kepada satu Dato' Zulkifli bin Ahmad ('peminjam'). Peminjam mengingkari pinjaman itu. Plaintif, melalui peguamcaranya menyebabkan satu notis tuntutan dihantar kepada defendan melalui pos berdaftar untuk menuntut jumlah tertunggak. Berikutan itu Borang 16D telah dikeluarkan oleh peguamcara. Memandangkan tiada pembayaran yang diterima daripada defendan, plaintif membuat permohonan ini untuk suatu perintah jualan dengan cara lelongan awam. Defendan membantah permohonan dengan alasan bahawa terdapat sebab yang berlawanan. Pertama, defendan mendakwa bahawa Borang 16D dan kertas kausa penebusan yang berkaitan tidak diserahkan kepadanya. Defendan mendakwa bahawa hanya terdapat bukti bahawa yang sama telah diposkan tetapi tidak terdapat keterangan untuk menunjukkan ia telah diterima oleh defendan. Kedua, defendan mendakwa bahawa terdapat rundingan yang sedang berjalan antara peminjam/defendan bersama satu pihak ketiga untuk faedah dan saham jualan dalam sebuah syarikat yang dikenali sebagai Ika Jaya Sdn Bhd ('Ika') dan sekiranya perintah jualan diberikan, itu akan menjejaskan jualan. Ketiga, defendan mendakwa bahawa walaupun mempunyai pengetahuan penuh mengenai kedudukan kewangan, umur peminjam dan defendan dan ketidakupayaan peminjam dan/atau Ika untuk membuat pembayaran balik, plaintif meneruskan untuk memberikan kemudahan pinjaman. Keempat, defendan mendakwa bahawa plaintif telah bertindak secara melulu dan telah menyalahgunakan proses undang-undang dengan matlamat utama untuk menyebabkan penindasan kepada defendan dan bahawa terdapat unsur-unsur salah nyata yang terlibat dalam keseluruhan transaksi.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Menurut s 256 KTN, sekali semua pra-syarat yang dinyatakan dalam undang-undang, KTN dan A 83 Kaedah-Kaedah Mahkamah 2012 ('KKM') telah dipenuhi sepenuhnya oleh pemegang gadaian, mahkamah ditinggalkan dengan tiada pilihan tetapi untuk memberikan permohonan yang dipohon oleh pemegang gadaian untuk mendapatkan perintah penjualan bagi hartanah yang dicagarkan melainkan jika mahkamah berpuas hati wujud 'cause to the contrary' (lihat perenggan 9).

(2) Dokumen yang difailkan di mahkamah membuktikan bahawa kertas kausa penebusan telah diserahkan kepada defendan. Berkaitan dengan servis dengan cara kad AR, ia telah diputuskan dalam *Yap Kee Huat & Ors v Pembangunan Warisan Murni Sejahtera Sdn Bhd & Anor* [2008] 5 MLJ 112 bahawa undang-undang tidak memerlukan plaintif untuk membuktikan penerimaan terhadap dokumen-dokumen itu. Sekali servis melalui AR telah dilaksanakan terdapat bukti prima facie bahawa dokumen-dokumen telah diserahkan atas defendan melainkan defendan boleh mematahkan sebaliknya (lihat perenggan 15).

(3) Rundingan-rundingan yang dikatakan untuk faedah dan saham jualan dalam Ika tidak langsung berkaitan dengan plaintif. Selanjutnya, tidak terdapat jaminan bahawa wang yang diperolehi melalui jualan, yang mana telah dirundingkan antara plaintif dan pihak ketiga akan dibayar kepada plaintif untuk menyelesaikan amaun tertunggak yang terhutang oleh peminjam kepada plaintif (lihat perenggan 16).

(4) Jika defendan dan/atau peminjam dan/atau Ika mengetahui sejak awal lagi bahawa pihak-pihak masing-masing tidak mempunyai cara untuk menyelesaikan jumlah di bawah kemudahan pinjaman, mereka sepatutnya tidak memohon untuk kemudahan dan/atau dalam kes defendan, dia sepatutnya tidak telah menawarkan hartanah itu dicagarkan sebagai jaminan bagi kemudahan itu (lihat perenggan 17).

(5) Tiada apa yang telah didemostrasikan oleh defendan akan tindakan menindas plaintif. Juga tiada tuntutan salah nyata telah ditunjukkan kepada mahkamah (lihat perenggan 18).

(6) Plaintif telah memenuhi kesemua keperluan statutori dan prosedural sebagaimana yang ditetapkan dalam s 256 KTN dan A 83 KKM masing-masing. Defendan gagal menunjukkan apa-apa kaedah *common law* atau doktrin ekuiti yang bertindak di pihak defendan dan yang mana suatu perintah jualan akan disekat. Defendan gagal untuk menunjukkan bahawa kes itu datang dari tiga kategori 'cause to the contrary' seperti yang dinyatakan dengan jelas dalam kes *Low Lee Lian v Ban Hin Lee Bank* [1997] 1 MLJ 77 (lihat perenggan 20).]

Notes

For cases on order for, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 4860–4978.

Cases referred to

Bank Kerjasama Rakyat Malaysia Bhd v Emcee Corporation Sdn Bhd [2003] 2 MLJ 408; [2003] 1 CLJ 625, CA (refd)

Century Land Resources Sdn Bhd v Alliance Bank Malaysia [2004] 4 CLJ 793, CA (refd)

Chan Boi Loi v Public Bank Bhd and anor application [2011] 1 MLJ 478; [2009] 6 CLJ 81, FC (refd)

Hongkiew Holdings (M) Sdn Bhd v Hyundai Heavy Industries Co Ltd [2007] 5 MLJ 762; [2007] 5 CLJ 165, CA (refd)

Kandiah Peter v Public Bank Berhad [1994] 1 MLJ 119, SC (refd)

Low Lee Lian v Ban Hin Lee Bank [1997] 1 MLJ 77; [1997] 2 CLJ 36, SC (refd)

Malaysian International Merchant Bankers Bhd v Dhanoa Sdn Bhd [1988] 1 MLJ 257; [1988] 1 CLJ 8 (refd)

Yap Kee Huat & Ors v Pembangunan Warisan Murni Sejahtera Sdn Bhd & Anor

A [2008] 5 MLJ 112; [2008] 4 CLJ 175, CA (refd)

Legislation referred to

National Land Code ss 253, 254, 255, 256, 256(2), 257, 258, 259, 260, 261, 262, 263, 264, 265, 340(2), (4)(b), Form 16D

B Rules of Court 2012 O 83, O 83 r 3(6)

Mohamad Zaid bin Daud (Zulpadli & Edham) for the plaintiff.
Muhd Aznel bin Azharudin (Aznel & Assoc) for the defendant.

C **Asmabi Mohamad JC:**

INTRODUCTION

[1] By this originating summons dated 18 June 2013 ('encl 1') the plaintiff D had applied for an order for sale pursuant to s 256 of the National Land Code ('NLC') over the property known as No 75, Jalan Aminuddin Baki, Taman Tun Dr Ismail, 60000 Kuala Lumpur held under Grant No 40399, Lot No 312490, Mukim Kuala Lumpur, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan ('the said property'). The said property was charged by the defendant to the E plaintiff as a security for the Islamic Term Financing-i Facility for the sum of RM4,100,000 granted by the plaintiff to one Dato' Zulkifli bin Ahmad ('the borrower'). The Islamic Term Financing-i Facility was a restructured financing facility premised on Syariah principle known as *Al Bai Bithaman Ajil* ('the Islamic financing facility'). The order for sale applied for was by way of public F auction.

[2] Prior to the restructuring of the financing facility, the borrower had been granted a financing facility for the sum of RM4,100,000 pursuant to a G letter of offer dated 24 July 2007 ('LO' at pp 31–36 of encl 2) and followed by an agreement dated 27 July 2007 ('financing facility').

THE APPLICATION

H **[3]** For the purpose of the hearing of encl 1, the following affidavits were considered by this court:

(a) the affidavit in support of encl 1 by Mohamad Sabri bin Jahya affirmed on 18 June 2013 (encl 2);

I (b) the supplementary affidavit of Mohamad Sabri bin Jahya affirmed on 17 July 2013 (encl 4);

(c) the supplementary affidavit of Mohamad Sabri bin Jahya affirmed on 22 July 2013 (encl 5);

(d) the defendant's affidavit in reply by Fawzia bt Othman affirmed on 29 August 2013 (encl 9);

(e) the defendant's affidavit in reply(2) by Fawzia bt Othman affirmed on 6 September 2013 (encl 10);

(f) the supplementary affidavit of Mohamad Sabri bin Jahya affirmed on 11 September 2013 (encl 11);

(g) the plaintiff's affidavit in reply by Mohamad Sabri bin Jahya affirmed on 11 September 2013 (encl 12); and

(h) the plaintiff's supplementary affidavit by Mohamad Sabri bin Jahya affirmed on 2 October 2013 (encl 13);

THE BRIEF FACTS

[4] The brief facts leading to encl 1 were as follows:

(a) By a letter of offer dated 24 July 2007 ('LO' at pp 31–36 of encl 2) and followed by an agreement dated 27 July 2007 the plaintiff had granted financing facility to the borrower totaling RM4,100,000.

(b) The defendant who is the registered owner of the property charged the said property in favour of the plaintiff as a security for the financing facility granted to the borrower.

(c) Pursuant to a supplementary letter of offer dated 22 April 2009, the supplementary financing agreement dated 28 April 2009, asset sale agreement dated 28 April 2009 and asset purchase agreement dated 28 April 2009 ('the transaction documents'), and upon the request of the borrower, the plaintiff/chargee had agreed to restructure the financing facility initially granted to the borrower to Islamic Term Financing-i Facility for the sum of RM4,100,000. The restructured financing facility is premised on Syariah principle known as *Al Bai Bithaman Ajil* which terms and conditions are as stipulated in the supplementary letter of offer dated 22 April 2009 ('Islamic financing facility' at pp 65–73) ('LO' at pp 74–110 of encl 2).

(d) The borrower defaulted on the Islamic financing facility. Letters were issued to the borrower and the defendant to demand for repayment. However, no payment was made either by the borrower and/or the defendant. On 25 October 2012 the plaintiff, through its solicitors Messrs Zulpadli & Edham ('the said solicitors') had caused a notice of demand to be sent to the defendant by way of a registered post to claim the whole sum remaining outstanding under the Islamic financing facility (exh 'S4' at pp 112 and 113 of encl 2). Despite this notice of demand being issued the defendant had refused, neglected and failed to pay the plaintiff the said sum.

(e) On 30 November 2012 a Form 16D (exh 'S5' at pp 124–127 of encl 2) was issued by the said solicitors. The said Form 16D stated that the amount owed by the borrower to the plaintiff as at 30 September 2012 stood at RM6,127,116.67 (exh 'S5' at p 124 of encl 2). Since no payment was received from the defendant, the plaintiff proceeded with encl 1 for an order for sale by way of public auction. The defendant opposed encl 1 on the ground that there was cause to the contrary.

(f) Enclosure 1 was fixed for hearing before me on 7 October 2013. Both parties had filed their written submissions and were also given the opportunity to ventilate their salient points. After having perused the affidavits filed by the plaintiff and the defendant and having considered the issues raised by both parties, I granted the prayers sought by plaintiff as stated in encl 1 with costs as I was satisfied that the defendant was not able to show cause to the contrary. After hearing a brief submission on the issue of cost I awarded cost of RM3,000 to be paid by the defendant to the plaintiff.

(g) Aggrieved by the said decision, the defendant appealed to the Court of Appeal Malaysia against the whole of the said decision.

THE LAW

[5] The relevant provisions which regulate a statutory charge under the NLC are ss 253 to 265. The specific procedure under which a chargee may apply to enforce his statutory remedy against a chargor in default is s 256 of the NLC which provide as follows:

> Application to Court for an order for sale
>
> 256(1) This section applies to land held under
>
> (a) Registry title;
>
> (b) The form of qualified title corresponding to Registry title; or
>
> (c) Subsidiary title, and to the whole of any divided share in, or any lease of, any such land.
>
> (2) Any application for an order for sale under this Chapter by a chargee of any such land or lease shall be made to the Court in accordance with the provisions in that behalf of any law for the time being in force relating to civil procedure.
>
> (3) On any such application, the Court shall order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of cause to the contrary.

[6] Subsection 256(2) of the NLC states that an application for an order for sale under chapter 3 by a chargee of any land or lease shall be made to the court in accordance with the provisions of any law for the time being in force relating to civil procedure, that is the Rules of Court 2012. The relevant provisions,

which set out the procedure to be complied by a chargee in an application for an order for sale is O 83 of the Rules of Court 2012. Order 83 of the Rules of Court 2012 is applicable to a charge action begin by originating summons as in this case in which the plaintiff is the chargee and claims delivery of vacant possession or payment of money secured by the charge or both (see O 83 r 3(6)).

[7] There are numerous decisions on this area of law (see *Kandiah Peter v Public Bank Berhad* [1994] 1 MLJ 119; *Low Lee Lian v Ban Hin Lee Bank* [1997] 2 CLJ 36 (SC); *Malaysian International Merchant Bankers Bhd v Dhanoa Sdn Bhd* [1988] 1 MLJ 257; [1988] 1 CLJ 8; *Bank Kerjasama Rakyat Malaysia Bhd v Emcee Corporation Sdn Bhd* [2003] 2 MLJ 408; [2003] 1 CLJ 625; *Hongkiew Holdings (M) Sdn Bhd v Hyundai Heavy Industries Co Ltd* [2007] 5 MLJ 762; [2007] 5 CLJ 165; *Chan Boi Loi v Public Bank Bhd and anor application* [2011] 1 MLJ 478; [2009] 6 CLJ 81; *Century Land Resources Sdn Bhd v Alliance Bank Malaysia* [2004] 4 CLJ 793).

[8] The principles of law which can be gleaned from the above quoted cases are that firstly in an application under s 256 of the NLC a chargee does not commence an action but merely enforces its statutory rights as a chargee against a chargor in default. By doing so, the chargee is enforcing his rights against the chargor by way of a proceedings in rem. Secondly, a chargee may claim the monies lent and/or facilities granted to the borrower from the borrower or from the chargor who may not be the borrower. The chargee is given the options to pursue other remedies provided by the law successively, concurrently or simultaneously.

[9] Pursuant to s 256 of the NLC, once all the pre-conditions as set out in the law, the NLC and O 83 of the Rules of Court 2012 had been fully satisfied by the chargee, the court is left with no option but to grant the prayers sought by the chargee for an order of sale of the land charged unless the court is satisfied there exists 'cause to the contrary'.

[10] In *Low Lee Lian v Ban Hin Lee Bank* [1997] 1 MLJ 77; [1997] 2 CLJ 36 (SC) His Lordship Sri Ram JCA (as he then was) held that the term 'cause to the contrary' within s 256 of the NLC can be established by the defendant in the following three categories of cases:

(a) if the chargor is able to demonstrate that it can bring its case within the indefeasibility doctrine illustrated in sub-s 340(2) and (4)(b) of the NLC;

(b) if the chargor can demonstrate that there was non-compliance of the provisions of the NLC and O 83 of the Rules of Court 2012; and

(c) if the chargor can show that, the granting of the prayer sought would be contrary to some rule of law or equity to which the sale relates.

FINDINGS

[11] Having considered the affidavits filed herein and the oral and written submissions by the respective counsel from both sides and having given the matter a very careful and serious consideration, these were my reasoning for allowing the prayers sought by the plaintiff in terms of encl 1 with costs.

[12] Upon perusal of encls 1, 2, 4 and 5 including all the exhibits annexed to the said encls 2, 4 and 5, I was satisfied that all statutory and procedural requirements as set out in the NLC, as well as the Rules of Court 2012 respectively had been strictly complied with by the plaintiff.

[13] In the course of perusing the relevant documents mentioned above, I observed that the plaintiff had inserted some irrelevant facts pertaining to the summary judgment obtained by the plaintiff against the borrower in the affidavits filed herein, which was objected to by learned counsel for the defendant. In disposing the case at hand, I had ignored these facts and merely focused on the statutory requirements in the NLC and O 83 of the Rules of Court 2012 as this case involved a statutory remedy, which the chargee was entitled to enforce against the chargor. I am also guided by the principles of law enunciated by the above-quoted cases, in that, what was before me was an application under s 256 of the NLC and O 83 of the Rules of Court 2012 and nothing more.

[14] Once the plaintiff had shown that it had complied with the statutory requirements under s 256 of the NLC and the procedural requirements under O 83 of the Rules of Court, this court had no choice but to grant the prayers sought in encl 1 unless the defendant was able to demonstrate that its case fell under one of the situations set out by His Lordship Sri Ram JCA in *Low Lee Lian v Ban Hin Lee Bank*.

[15] In her attempt to resist encl 1, firstly the defendant had raised the issue of non-service of Form 16D as well as all the relevant foreclosure cause papers on her. The defendant claimed that exh SA6 annexed to encl 2 only proved that the same had been posted but there was no evidence to show that it had been received by the defendant. This point of submission was without any merits as the document filed in court proved that the foreclosure cause papers were served on the defendant (see encl 3 — affidavit of service of one Faizura bt Jamal affirmed on 24 June 2013 and exh 'FJ1') With regard to service by way of AR card, it was held in *Yap Kee Huat & Ors v Pembangunan Warisan Murni Sejahtera Sdn Bhd & Anor* [2008] 5 MLJ 112; [2008] 4 CLJ 175 that the law

does not require the plaintiff to prove receipt of the documents. Once the service by AR had been effected there is prima facie proof that the documents were served on the defendant unless the defendant was able to rebut otherwise. As regards service of Form 16D, the plaintiff had satisfied the requirements as to the mode of service as agreed by parties (see exh 'S4' of encl 2 and Item 38 at p 27 of Annexure to 'S1').

[16] Secondly, the defendant claimed that there were ongoing negotiations between the borrower/defendant with a third party for the sale of the interest and shares in a company known as Ika Jaya Sdn Bhd. The defendant further contended that a company known as KPB Construction Sdn Bhd has shown interest to buy the interest and shares in Ika Jaya Sdn Bhd. If the order for sale was granted by the court this would hamper all attempts and/or negotiations to dispose the interest and/or shares in Ika Jaya Sdn Bhd to a third party. These negotiations were still ongoing and latest being with a company known as Garuda Emas Holdings Sdn Bhd. To me this could not be termed as a situation, which fell under the term 'cause to the contrary' as the alleged negotiations had nothing to do with the plaintiff. Further, there was no guarantee that the monies obtained through the sale, which were negotiated between the plaintiff, and the third party would be paid to the plaintiff to settle the outstanding amount owed by the borrower to the plaintiff.

[17] Thirdly, the defendant claimed that despite having full knowledge about the financial standing, the age of the borrower and the defendant and the incapacity of the borrower and/or Ika Jaya Sdn Bhd to make repayment, the plaintiff proceeded to grant the Islamic financing facility to the borrower. Despite the fact that the borrower and Ika Jaya Sdn Bhd were not able to obtain any financial assistance from other institutions, the plaintiff acceded to the request. The plaintiff too knew that the borrower and Ika Jaya Sdn Bhd did not have any income but were waiting for the joint venture between the plaintiff and/or Amanahraya Development Sdn Bhd to kick-off in order to reap some income from the said joint venture. This too is a non-starter. If the defendant and/or the borrower and/or Ika Jaya Sdn Bhd knew from the outset that these respective parties had no means to settle the amount under the Islamic financing facility, they ought not to have applied for the facility and/or in the case of the defendant, she ought not have offered the property to be charged as a security for the Islamic financing facility. This to me was an afterthought and ought not to be entertained by this court. Therefore this issue too did not amount to 'cause to the contrary' as illustrated in *Low Lee Lian v Ban Hin Lee Bank*.

[18] The defendant further claimed that the plaintiff had acted recklessly and had abused the process of law with the ultimate aim to cause oppression to the defendant. There were also elements of misrepresentation involved in the

whole transaction which led to the execution of the transaction documents. Nothing had been demonstrated by the defendant of the oppressive acts of the plaintiff. Neither had the claim of misrepresentation been shown to this court. Therefore this issue too did not amount to 'cause to the contrary' as illustrated in the case of *Low Lee Lian v Ban Hin Lee Bank*.

[19] With regard to the last issue pertaining to the presence of a representative from Amanah Raya Bhd in Majlis Mesyuarat Kerajaan (see exhibit marked as 'FBO6' in encl 10) as claimed by the defendant, the said exhibit did not explain anything more than to state the names of those people who were present. There were no minutes of the meeting shown to demonstrate a situation, which can be categorised as 'cause to the contrary'.

[20] Reverting to the case at hand, it is apparent that from the reasonings set out above the plaintiff had satisfied all the statutory and procedural requirements as set out in s 256 of the NLC and O 83 of the Rules of Court respectively. Based on my reasoning as set above, I find that the defendant had failed to show any rule of the common law or doctrine of equity operating in the defendant's favour and against which an order for sale would militate. I find that the defendant had failed to show that its case came within the three categories of 'cause to the contrary' as enunciated in *Low Lee Lian v Ban Hin Lee Bank*.

CONCLUSION

[21] Based on the aforesaid reasons, I allowed the plaintiff's encl 1 with costs. I further made an order for costs of RM3,000 for encl 1 to be paid by the defendant to the plaintiff.

Plaintiff's application allowed with costs.

Reported by Kanesh Sundrum